

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

In Re:	)	
	)	
AREDIA and ZOMETA PRODUCTS	)	No. 3:06-MDL-01760
LIABILITY LITIGATION	)	Judge Campbell/Brown
(MDL No. 1760)	)	
	)	
This Document Relates to:	)	
Case Nos. 3:07-CV-0572,	)	
AND 3:07-CV-0573	)	

**TO: The Honorable Todd J. Campbell**

**REPORT AND RECOMMENDATION**

**BACKGROUND**

Presently pending before the Magistrate Judge is the Defendant's motion to dismiss the case on the grounds that these Plaintiffs have failed to complete a Plaintiff Fact Sheet (PFS) (Docket Entry 776). The Magistrate Judge subsequently entered an order for these two Plaintiffs to show cause why their cases should not be dismissed (Docket Entry 1293). The Plaintiffs have now responded (Docket Entry 1335).

The Plaintiff Anderson has advised that she has not completed the PFS and agrees that her case should be dismissed without prejudice.

The Plaintiff Benabise advised that although ill, he did complete a PFS on November 26, 2007, and signed the requisite declarations. He advised that he believed a copy was mailed to counsel for Novartis; however, in view of Novartis' motion, they are again serving a copy of this Plaintiff's PFS on Novartis.

Under these circumstances, the Magistrate Judge recommends that the Plaintiff Anderson's case be **dismissed without prejudice** and that the motion to dismiss the Plaintiff Benabise's case be **DENIED**. Plaintiff Benabise has now furnished the Defendant with his PFS and it does not appear that any prejudice has been caused by such a delay.

#### RECOMMENDATION

For the reasons stated above, the Magistrate Judge recommends that the defendant's motion (Docket Entry 776) be granted in part and denied in part: That it be GRANTED as to the Plaintiff Anderson and that her case be dismissed without prejudice, and the Magistrate Judge further recommends that the motion be DENIED as to the Plaintiff Benabise inasmuch as he has now filed the requisite PFS.

Under Rule 72(b) of the Federal rules of civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 106 S. Ct. 466, 88 L.Ed.2d 435 (1985), *Reh'g denied*, 474 U.S. 1111 (1986).

**ENTERED** this 5th day of May, 2008.

/s/ Joe B. Brown  
JOE B. BROWN  
United States Magistrate Judge